IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 30818 of 2005(R)

PETITIONER:

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1. FR.PRIOR, ST.XAVIER'S CARMEL MONASTERY
PULLUR P.O., THRISSUR DISTRICT.

2. FR.PRIOR, CHRIST MONASTERY,
IRINJALAKUDA, THRISSUR DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

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1. THE DIRECTOR OF COLLEGIATE EDUCATION,
VIKAS BHAVAN, THIRUVANANTHAPURAM.

2. DEPUTY DIRECTOR OF COLLEGIATE EDUCATION,
THRISSUR.

3. THE PRINCIPAL, CHRIST COLLEGE,
IRINJALAKUDA, THRISSUR DISTRICT.

BY ADV. SRI.K.B.GANGESH
GOVERNMENT PLEADER SRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1: TRUE COPY OF DEATH CERTIFICATE DT. 5/12/2003.

EXT.P2: TRUE COPY OF FIRST PAGE OF SERVICE BOOK OF FR.VARGHESE.

EXT.P3: TRUE COPY OF CERTIFICATE DT. 31/1/2004.

EXT.P4: TRUE COPY OF RELEVANT PAGE OF PENSION BOOK.

EXT.P5: TRUE COPY OF COVERING LETTER DT. 10/12/2004.

EXT.P6: TRUE COPY OF COVERING LETTER DT. 5/2/2005.

EXT.P7: TRUE COPY OF LETTER DT. 12/4/2005.

EXT.P8: TRUE COPY OF DECLARATION DT. 1/1/1986.

EXT.P9: TRUE COPY OF NOMINATION.

EXT.P10: TRUE COPY OF NOMINATION.

EXT.P11: TRUE COPY OF IDENTITY CARD ISSUED BY THE ELECTION COMMISSION.

EXT.P12: TRUE COPY OF COMMUNICATION DT. 20/7/2005.

EXT.P13: TRUE COPY OF ORDER DT. 9/5/2002.

A.K. Basheer, J.

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and signature of Rev.Fr.Varghese are on record as Exts.P9 and P10. In Ext.P11 electoral card issued by the Election Commission of India, the permanent residential address of Rev.Fr.Varghese was shown as Christ Monastry, Irinjalakuda. The Religious Superior of the said Monastry, Fr.Cajus, was shown as the father of Rev.Fr.Varghese.

4. But when the petitioners submitted Ext.P4 application in the prescribed format along with all relevant documents for release of DCRG and other retiral benefits payable to Rev.Fr.Varghese, they were directed, through Ext.P7 communication dated April 12, 2005 to produce the legal heir ship certificate of Rev.Fr.Varghese, issued either by the Court or the Tahsildar concerned. Later, the office of respondent No.2 had issued Ext.P12 reminder, directing the petitioners to produce legal heirship certificate.

5. It is contended by the petitioners that Rev.Fr.Varghese had joined the CMI Congregation after renouncing his familial ties. Therefore respondents 1 and 2 were not justified in insisting for production of legal heirship certificate of Rev.Fr.Varghese. By joining the Congregation, Rev.Fr.Varghese had suffered "civil death", and for all practical and spiritual purposes he had cut off his worldly ties.

6. In the above context it may be profitable to refer to the decision in Oriental Insurance Company v. Mother Superior S.H. Convent (1994 (1) KLT 868), in which a Division Bench of this Court had held that as soon as the deceased in that case (victim of a motor accident) had joined the Holy Order of the Sacred Heart Congregation and took the perpetual vow after renouncing her natural

family, she had ceased to be a member of her the family and become a member of the Holy Order. All her income by way of salary and other benefits would devolve on the Convent of which the Mother Superior was the administrator. The Division Bench went on to hold that the Mother Superior being the head of the Convent was entitled to claim compensation on account of the death of the deceased. It was further laid down by the Division Bench as follows:

> "Even though the deceased continued to be an Indian Christian as defined under S.2(d) of the Succession Act, because of her civil death by becoming a member of the Holy Order the natural heirs mentioned in Ss.41 to 48 of the Succession Act will not be her legal heirs. If she had made a will it was to take effect at once as though she were naturally dead. So also if one of her kinsman dies leaving properties which according to ordinary rules of inheritance would descend to her, she will be overlooked as though she were no longer alive. Entering religious orders resulted in the eyes of the Church in death to the world. From the time of her entrance into the Holy Order she could not acquire anything and she acted only as a

> means of receiving for the benefit of the Holy Order. By becoming a member of the Holy Order she becomes member of the family consisting of the Mother Superior and other members of that Holy Order."

While holding as above, the Division Bench had referred to the following dictum laid down by the Supreme Court in Sithal Das v. Sant Ram (AIR 1954 SC 606) :

> "It is well known that entrance into a religious order generally operates as a civil death. The man who become an ascetic severs his connection with the members of his natural family and being adopted by his preceptor becomes, so to say, a spiritual son of the latter. The other disciples of his Guru are regarded as his brothers, while the co-disciples of his Guru are looked upon as uncles and in this way a spiritual family is established on the analogy of a natural family".

Later, in Varghese v. Krishnan Nair (2004 (2) KLT 783) this Court had occasion to consider the tenability of the claim made by the legal representatives of a deceased Priest , the victim of a motor accident , as

against the claim made by the Monastry to which the Priest belonged. The Motor Accidents Claims Tribunal had allowed the claim petition filed by the Monastry and rejected the other filed by the legal representatives. While sustaining the order of the Tribunal, the Division Bench had referred to several earlier decisions, one of which was in Kondol Row v. Swamulavaru (AIR 1918 Madras 402). In that decision it was held that the entry of a Sanyasi to a Religious Order generally operates as a civil death.

7. In Kanjiramattom v. D.E.O, Kottayam & Ors. (1977 KLT 303) excerpts from various authoritative religious texts regarding the effect of taking a perpetual vow and becoming a Nun were quoted. The following passage from Pollock and Maitland's History of Indian Law Vol. I page 434 was quoted by the Division Bench:

> "A monk or nun cannot acquire or have any proprietary rights. When a man becomes professed in religion, his heir at once inherits from him any land that he has, and, if he has made a will, it takes effect at once as though he were naturally dead...."

The following passage from the History of French Private Law in the Continental Legal History Series, Vol. III, para. 585 as quoted by the Division Bench may be noticed:

> "Entering Religious Orders resulted in the eyes of the Church in death to the world. From this it should have been concluded

> that from the time of his entrance into a monastery the monk could not acquire anything, and that the possessions which he had at that time should pass to his heirs".

In the History of Italian Law (Continental Legal History Series, Vol.III , at page 512, para. 299), it was stated thus:

> " A sort of civil death overtook one who took solemn religious vows, though limited in its effect to property and inheritance".

8. It is on record that Rev.Fr.Varghese had taken the perpetual vow to become a Priest dedicating his entire life to the God and the Religious Order as could be seen from Ext.P8. Undoubtedly Rev.Fr.Varghese had renounced all his worldly possessions. He further vowed that whatever he earned thereafter either individually or collectively, were "meant" for the service of the people and for carrying out the special activities undertaken by his community. Clause 33 of the Constitution of the Congregation postulated that :

> "All our properties and individual and collective earnings are meant for the service of the people and for carrying out the special activities undertaken by our community in the spirit of our rules. Income and remuneration for work done including

> royalties, honoraria and other emoluments shall, therefore, be accepted in the name of and on behalf of the community..."

In clause 31 it was further stipulated that all that was obtained by a member or was given to him as gifts or remuneration would accrue to the community.

9. There is no dispute that Rev.Fr.Varghese was a Priest in the CMI at the time of his death. None of his legal representatives had staked a claim for his service benefits at any point of time. Obviously he had "embraced a life of poverty, chastity and obedience" as enunciated in the constitution of the Congregation. The entry of Rev.Fr.Varghese into the fold of the above religious congregation had operated as a civil death. Therefore whatever he earned as a member of the said religious congregation should accrue to the welfare of the community for the cause of which the Congregation had been set up.

10. It is also on record that Fr.Varghese had nominated the Prior, Christ Monastry, Irinjalakuda as his nominee to receive his dues under the Provident Fund and Employees' Group Insurance Scheme. His permanent address in the electoral card was the Monastry at Irinjalakuda and Fr.Cajus was shown as his father. Thus it is apparent that Fr.Varghese had taken a conscious decision to exclude his legal heirs/relatives in the matter of nomination to receive the dues referred to above. Obviously he had given up his parental and other familial bondage. It may be true that he had not nominated any member of the

Congregation as far as the DCRG and other service benefits were concerned. But once he had joined the CMI Congregation, he had cut off all his familial ties and therefore his legal heirs ceased to have any claim over his worldly savings. As mentioned earlier, none of his legal heirs had made any claim for those benefits till date. In that view of the matter also, I have no hesitation to hold that respondents 1 and 2 were not justified in refusing to release the retiral benefits of Rev.Fr.Varghese to the petitioners.

11. Respondents 1 and 2 shall therefore pass appropriate orders in the matter without insisting for production of legal heirship certificate of Rev.Fr.Varghese, if all other criteria are satisfied and if there is no other legal impediment. This shall be done as expeditiously as possible, at any rate within two months from the date of receipt of a copy of this judgment.

Writ Petition is allowed.

A.K. Basheer
Judge.

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